

82-1520

FILED

FEB 2 1983

IN SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.

GERALD J. LANDSBERGER

PETITIONER

vs.

COMMISSIONER OF REVENUE,

STATE OF MINNESOTA

RESPONDENT

PETITION FOR

WRIT OF

CERTIORARI

APPENDIX

EXHIBITS

MINNESOTA SUPREME COURT ORDER..... A(1)
TAX COURT ORDER..... B(1-9)
AFFIDAVIT OF FRANK FORRESTER..... C(1-21)
CONSTITUTION OF U.S. ART. 1 SEC.10. D(1)
CONSTRUCTIVE RECEIPT-TAXATION..... D(1-4)
FOREIGN TAX TREATIES..... E(1)
COMMENT-LUCAS vs. EARL..... E(1)
F(1)
RIGHT TO SELL PERSONAL SERVICES VIA
A CONTRACT-COURT CASES..... F(1-6)

Gerald J. Landsberger)
 Relator, }
82-842 vs. }
Commissioner of Revenue, }
Respondent.)(Note: Ruling was
 made prior to re-
 ceceipt of Frank
 Forrester's affi-
 davit.)

Considered and decided by the court en banc
without oral argument.

ORDER

Based upon all the files, records, and pro-
ceedings herein, IT IS HEREBY ORDERED that
the decision of the Minnesota Tax Court,
filed June 11, 1982, be, and the same is,
affirmed pursuant to Rule 136.01(2), Rules
of Civil Appellant Procedure.

Dated: November 10, 1982

BY THE COURT:

(Original Signed)

M. Jeanne Coyne
Associate Justice

In the Matter of the Appeal from the Commissioner's Order dated May 22, 1981, relating to the Income Tax of Appellants for the year 1979, Gerald and Betty Landsberger.

Order dated June 11, 1982 - - - DOCKET 3354

The above entitled matter was heard by the Minnesota Tax Court on February 16, 1982, Judge Carl A. Jensen presiding.

Gerald Landsberger, one of the Appellants appeared on behalf of the Appellants.

Paul R. Kempainen, Special Assistant Attorney General, appeared on behalf of the Appellee.

Frank Forrester was allowed to file a Brief amicus curuae. In a Brief he stated the following: "It is very important to recognize that Frank Forrester was/is the sole expert to testify re the organization, the purpose, the parties, the authority to act re IDI (International Dynamics, INC.), IDI Credit Union, Equity Credit Foundation P&TS (Professional and Technical Services),

American Dynamics Corp., and Financial Counselors, Inc."

SYLLABUS

1. A so-called lifetime sale of "personal services property" between Landsberger, the Appellant herein, and P&TS, which was stated to be a trust of some kind, does not affect the taxability of income that Appellant received from his employer, Burlington Northern Railway. The employer is required to withhold income taxes, pay Social Security Taxes, carry Workers Compensation, and do any other things required of any employer.

2. An attempt to avoid withholding taxes by an employee by claiming more exemptions or deductions when are allowable and making said claims on his tax return is tantamount to fraud and willful evasion of taxes under Minn. Stat. 290.53.

3. A person advising or assisting in the fraudulent attempt to evade taxes may be guilty of a crime under Minn. Stat. 609.05

FINDINGS OF FACT

1. The Appellants, Gerald and Betty Landsberger, are cash basis, calendar year taxpayers and residents of the State of Minnesota. The taxable year at issue herein is 1979.

2. During the year 1979, Appellant Gerald Landsberger (hereinafter referred to as Landsberger) was employed in the Accounting Department of the Burlington Northern Railroad. Landsberger's employment with Burlington Northern began in 1952 and continued until his resignation in 1981. By reason of this employment, Landsberger was paid by Burlington Northern a total of \$25,027.72 in compensation during the taxable year 1979 as shown by his W-2 Form.

3. On May 27, 1979, Landsberger signed a document titled "Personal Services Contract" with Professional and Technical Services (a Trust) which was also signed by F. Forrester. On June 1, 1979, Landsberger signed a

document titled "Intrusted Personal Services Contract" which was signed by Frank Forrester, trustee for Professional and Technical Services. The first contract indicates that it is an assignment of personal services to run continuously until cancelled in writing. Further language appears to indicate that the contract renews automatically for one year unless either party gives fifteen days notice in advance of the annual renewal date. Further language indicates that either party can terminate the contract by giving written notice thirty days in advance of the requested termination date. There appears to be some conflict in these provisions.

The second contract appears to indicate that it runs "indefinitely." Nothing further is said about terminating but Frank Forrester stated in his rebuttal to Appellee's brief as amicus curiae on Page 3 that it was " an actual legal, valid, irrevocable contract in full force and effect."

4. Burlington Northern, Landsberger's employer, had no knowledge of the contracts referred to above during the period involved herein.

5. Landsberger endorsed over to IDI \$15,236 of his paychecks from Burlington Northern. Burlington Northern withheld state and federal income taxes and Social Security taxes, and Landsberger received and was entitled to all the benefits of other employees of Burlington Northern.

6. Landsberger received \$14,475 in payments from IDI Credit Union. This was 95% of the amount he signed over to IDI. It appeared that as soon as he turned over a check to IDI he received in return a check for 95% of the check turned over. Landsberger and Forrester characterized the payments from IDI Credit Union as gifts from a charity. Similar contracts were signed by Forrester with other employees and Landsberger participated in soliciting and signing some of the contracts. Landsberger

also handled some of the receipts and made some of the payments from the IDI Credit Union. It appeared that the payments to other employees amounted to 80 to 100 percent of the amounts of the paychecks that they turned over. The checks were mailed to a Post Office Lock Box in the St. Paul Post Office from the other employees and Landsberger then deposited these checks in the St. Paul bank account over which he had signature authority and made the payments by check signed by him to the other employees.

7. Landsberger filed his 1979 Minnesota Tax Return indicating the amount he had received from his employer, Burlington Northern, and he took a deduction of \$15,236, which he called "factors discount on accounts receivable-resold," which was the amount of paychecks signed over to IDI.

8. Landsberger also took a deduction on his 1979 Tax Return of \$445 which he called

"advisors fees for advice on investing assets/property."

9. The Appellants' 1979 Minnesota Income Tax claimed that no Minnesota Income Tax was due from Appellants and that they were entitled to a refund of \$753.

10. Appellants also claimed and received a property tax refund for 1979 in the amount of \$247 based on the net income shown on their tax return.

11. Upon audit by the Commissioner of Revenue, the factors discount deduction of \$15,236 and the deduction of \$445. for advisors fees were disallowed. The property tax refund was recomputed and as a result of these changes the following additional tax plus interest was assessed against Appellants for 1979:

Additional Income Tax	\$671
Property Tax Refund	247
Disallowed	<hr/>
Total	\$918.

12. The Commissioner issued his order

of Assessment on May 22, 1981. The Appellants have taken a timely appeal from that Order to this Court.

13. Landsberger was an employee of Burlington Northern Railroad and was required to pay income taxes on the wages received from Burlington Northern Railway. Any transactions that he had with IDI or P&T⁸ had no effect on the taxability of his income from Burlington Northern Railway.

14. There is no basis for the factors discount deduction of \$15,236.

15. The deduction of \$445 for advisors fees was properly disallowed as there was no showing that it was made in connection with the management, conservation or maintenance of any of his property which produces or is intended to produce taxable income to him.

16. A claim of excess withholding exemptions or deductions resulting in tax reduction or exemption may be tantamount to fraud and will ful evasion of taxes subject to criminal penalties under Minn. Stat.

290.53

17. A person advising or assisting in
the fraudulent attempt to evade taxes may be
guilty of a criminal act under Minn. Stat.
609.05.

CONCLUSIONS OF LAW

1. The Commissioner's Order of Assessment dated May 22, 1981, is hereby affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

By the Court,

(Original signed by)

Carl A. Jensen,
Judge
Minnesota Tax Ct.

B(9)

AFFIDAVIT OF FRANK FORRESTER 11/6/82

This Affidavit is being furnished in lieu of personal testimony and appearance by Frank Forrester as the sole existing expert witness re the operation of the Personal Services Contract. This information is designed to defend Frank Forrester, Forrester's financial investment systems, Professional & Technical Services, a trust (Frank Forrester, Trustee), and the wilfully false, deliberate libel and slander, fraudulently manufactured, twisted and distorted, unsupported, and unfounded claims/statements of the lower court in arriving at a totally prejudiced opinion against Gerald Landsberger. Public interest and judicial honor requires the undersigned (Frank Forrester) to point out each false statement made by the court below on the 11th of June 1982. Regardless of who says them, lies

never add up to a single truth.

To have arrived at its adverse claims and comments and to buttress them so as to give them the air of reality the mind of the lower court had to be involved as follows:

1. Prejudice and bias existed beforehand and any excuse was leaped upon as a basis to issue derogatory comments about Landsberger, Forrester, and the systems--even though Forrester took pains to prepare an explanatory flowchart during the recess.

2. No attention was paid to its oath of office to uphold and defend the Constitution and to be a servant of the people to protect the people from the tyranny of Government.

3. All key issues were ignored and concentration was on only irrelevant matters.

4. Several times false words and leading questions were used to attempt to dis-

tort testimony of Landsberger and to cut off Forrester's pertinent testimony.

5. Lacking any facts to support its prejudices, it substituted its own version of the facts and made its interpretation based on same using words like "absurd" and "ridiculous."

6. It filled its opinion with dozens of spurious court cases, all relating to irrelevant matters of no comparison or consequence. This was done deliberately to "beef up" the lower court's opinion inasmuch as there are no prior cases on record of any similarity to the present case.

7. The lower court has illegally attempted to quote many passages from another case which (a) is still pending in the 8th Circuit Court of Appeals (b) was never heard on its merits (c) contains some 111 false statements of Judge Renner in the Federal District Court who blocked all due process and discovery and interrogatories of Landsberger in order to steam roller over Lands-

berger in a vicious display of judicial arrogance for the American system of law and order.

8. The lower court, in order to pretend to make a case, was forced to violate the "Contract Clause" of the U.S. Constitution by pretending that the Personal Services Contract did not exist as a viable contract in full force and effect.

9. The lower court changed the wording of the Personal Services Contract from being that of a SALE OF ASSETS to being a GIFT OF INCOME. This is the basic LIE that the lower court had to depend on in order to list all of its irrelevant conclusions, its irrelevant court case citations (all of which related to gifts of income, and none related to sale of assets), and its fatuous claims of wrongdoing by Landsberger and Forrester.

10. The lower court lied to bring Burlington Northern into the case since BN was not a party to any of the Personal Services Contracts and was not involved in any

other way with the issues at hand.

11. The lower court tried to duck the issues at hand by pretending that "constructive receipt" was not involved and by pretending that Landsberger was the legal owner of earnings generated AFTER Landsberger has legally sold the assets which generated those earnings.

12. The lower court twisted the decision in the U.S. Supreme Court case of Lucas vs Earl, 1930, to make it appear that Landsberger had given away income that he had legal control over and constructive receipt of; whereas, Landsberger never for a single instant ever had any further legal control once he had sold the earning assets. Landsberger merely had physical control, and he discharged his legal duties by turning over to Professional & Technical Services, a trust, what wasn't his to keep.

13. The Appellee in prior hearings had properly agreed that any contract between

P&TS and Burlington Northern was "NOT CONTROLLING," so that any reference to BN was moot. Yet, the lower court harped and harped on this meaningless, non-existent contract. What BN considered and did do or didn't do is entirely immaterial and must be stricken and ignored.

14. For these and the following reasons all the lower court's comments are nothing but frivolous nonsense designed solely to support the unlawful attempts of the Appellee to extract more taxes than the law allows. The lower court sought to plug what it considered to be a loophole in the law, but the lower court (FORTUNATELY) has no such law making power or authority.

15. The lower court ignored the sole basis of all of the systems invented by Frank Forrester, which is that they are all improvements in the investment of assets as the sole source of all the profits in the world, i.e., accounts receivable, a 100% legitimate enterprise in our FREE ENTERPRISE

AMERICA. Landsberger and Forrester are a part of the tax producers with their free enterprise systems while the lower court is a part of the tax consumers, which is why the lower court was so blatantly biased and so unjudicial like as to be appalling.

The following numbers prior to affidavit statements refer to pages of the lower court's decision.

B(2) Lower Court (LC) lies to claim the Personal Services Contract (PSC) "does not affect the taxability of income that Appellant received..." Not only is it the key element which legally separates Landsberger from the income, but it permanently and legally removes Landsberger from any taxability on the income legally owned by Professional & Technical Services. Attempting to not recognize the legitimate PSC is a deliberate act by the LC to avoid the truth and to substitute the nonsense of the Appellee.

B(2) LC lies to characterize the legitimate "allowances" of Landsberger as "exemptions."

As Landsberger owned no legal income, he had no legal tax liability, so he was exactly within his rights and according to the stated purpose and instructions on the IRS' W-4 form to file with enough allowances to cause the computer to not withhold any taxes on the income which BN had credited to Landsberger but for which Landsberger was not the legal owner. Altho the W-4 has no provision, i.e., no boxes or special instructions to handle the non-constructive receipt of money, the IRS agents have consistently said that the approach used by Landsberger was correct and that the advice given to Forrester to attach an explanation was the only way remaining for filing W-4's and 1040 tax returns. Appellee has failed/ refused to show any other method for filing for non-constructive receipt. In fact. Appellee and LC both pretend they have not heard of constructive receipt. Later, the

LC gives its view of what area is covered by constructive receipt but that area is not the area involved in this case. The LC merely showed its total ignorance of all areas of constructive receipt as covered fairly well by MERTENS.

B(2) The LC tries to scare the Appellant by making non-applicable references to "fraudulent attempt to evade taxes..." Not only is there no fraud and no attempt to evade taxes by Landsberger, but no taxes of any kind are due to Appellee. The LC is engaged in illegal threats and coercion under a voluntary system of taxation when nothing is owing or due.

B(3) The LC lies to claim Landsberger resigned. Landsberger retired after meeting all of the requirements for retirement of BN.

B(3) The LC tries to bring BN into the case, but lack of knowledge of BN only proves that BN was not a party to any contract and is

thus not in the picture.

B(5) The LC lies to refer to Landsberger's physical receipt of money as "his paychecks". The paychecks were not the legal property of Landsberger so it is fraud to refer to same as "his paychecks."

B(5) The LC tries to make something of nothing by referring to benefits Landsberger received from BN. As both employees and outside contractors receive pretty much the same benefits either direct from the employer or indirectly from the employer to the body shop to the independent contractor. This reference is just a smoke screen by the LC to attempt to smear the operation of the Personal Services Contract. The BN was not withholding monies for Social Security for the benefit of Landsberger, RR is involved. Premiums have to be paid by law by someone, so who pays is meaningless.

B(5) The LC lies to characterize the gifts given out by the IDI Credit Union as "pay-

ments." No payments of any kind were ever made by the charities to anyone. All monies issued were gifts always. The amount of the gifts, the date of the gifts, the parties to whom gifts were issued are all immaterial as the Appellee has no jurisdiction over the charities. No jurisdiction means exactly what it says, no control and no right to carp or criticise or to be mentioned by the LC. Since Landsberger had/has no legal connection with the charities, there is no point to mentioning the gifts. On June 22, 1982 I spoke with Mr. Fiorells, Attorney in the NY State Banking Commission to ascertain the legal status of a person given temporary appointment to sign withdrawal checks on an account in which the signing party was not an officer, director, employer, or agent appointed under a power of attorney. Mr. Fiorello plainly stated that there is no law or regulation covering the subject, that the signing party is limited to responsibility for signing just

those checks with his name on and only to that one bank account, that such party has no other legal connection with the appointing organization, and that the IRS agents and the LC should go back to school to learn their ABC's. (Phone 212-488-5629, NYC)

B(5) The LC made several false and unsupported and irrelevant assumptions re the gifts. It is false that "as soon as he turned over a check to IDI..." because no dates were specified. "He received in return..." is also false as no dates are shown. Also, money may be given away by the charities from any source to anyone in any amount at any time, and the Appellee has no jurisdiction over same. All gifts were given out from monies on hand previously, and there was no waiting for any bank clearances, so there was no connection between monies going into IDI and gifts coming out from the charities. Further, IDI had sole legal control over its monies and could do what it wanted with them. IDI never gave a penny

to Landsberger. Thus, since the Appellee has/had no jurisdiction over IDI, the Appellee also had no jurisdiction over what either IDI or the charities did with their money at their sole discretion. Anyone hoping to get any money from any of the charities had to make a request for same, and the charities then decided what monies they could give out.

B(6) Despite the slurred inference by the LC, there is nothing illegal in marketing the PSC. It is also not illegal to handle any of the bookkeeping chores for same; Landsberger was an auditor by trade so he was fully capable to handle minor bookkeeping which even my wife has learned to do. Further, anyone can issue the gift checks, so again there is not an iota of illegality in such procedures and the LC is only trying to sneer at such effort. Again, it is false for the LC to characterize gifts as payments since one normally considers a payment as a

discharge of an obligation; no such obligation exists here. This is merely one of shyster tricks used by the LC to prejudice the appeals court.

B(6) It is a GROSS LIE of the LC that Landsberger had any "signature authority" in the St. Paul (or elsewhere) bank account in which checks were deposited. Landsberger was/is not listed as a signatory. However, even if he had been, it would still make no difference as it is not illegal to have signatory privileges of a temporary appointment nature. A false connotation of illegality is what the LC is attempting, but their effort is fruitless.

B(6) The LC also commits fraud by attempting to infer that it is illegal for Landsberger or any of the other 150 bookkeeping parties to sign outgoing checks for the charities. Every big charity is required to have dozens of appointed "bookkeepers" to issue all of their gift checks. Again, this is a smoke screen and an intended

smear.

B(6) The IRS agents originally in NYC said that deductions on the 1040 should be listed as a factor's discount expense to explain the deductions. The factor's discount refers to the fact that the legal owner of the paychecks, P&TS, has factored its accounts receivable and has taken an expense reduction under IRS Code Sec. 165(a). The IRS

advice was passed^s_^ on to Landsberger, and he followed this IRS advice, but it doesn't refer to any fact or claim by Landsberger that the accounts^s receivable were his accounts receivable; they were not; they were solely P&TS' accounts receivable. The amounts listed by Landsberger were 100% correctly computed and set forth as \$15,236.00.

B(6) The disallowance of the \$445.00 for advisory fees was illegal. Fees may be deducted for the purpose of preserving, conserving, and maintaining the assets which Landsberger already owned. It was/is not

necessary for Landsberger to assign the fee expense to the investment of new assets only in the future. The LC knew this and falsely tried to harrass Landsberger by supporting the unlawful claims of the Appellee. All over the world fees are paid and deducted for legal, accounting, and financial management advice and done legally and are given proper credit for same on 1040 tax returns. The LC and Appellee are wrong in claiming the \$445.00 fee was not reasonable and justifiable. Other clients by the thousands have paid fees up to \$5,000 for such valuable advice. Most lawyers make their living giving out advice worth less than 5% of what Forrester and IDI have given out to Americans to protect their family estates from bureaucrats. What the LC really hates is that Forrester's systems permit the average American to live free and clear of the odious Probate Courts where lawyers and courts make up to 80% of their fees, which is a shamful disgrace to be eliminated where

ever possible.

B(8) The LC lies to refer to "his income;"
the income is solely the legal ownership of
P&TS. Because Appellee has no jurisdiction
over P&TS, the Appellee and the LC are try-
ing find another party to stick with their
confiscatory taxes; this is the prejudice
of the LC.

B(8) The LC lies to claim "There is no basis
for the factors discount..." The basis is
very simple and clear--P&TS is the owner not
Landsberger, and P&TS can factor any and all
of its accounts receivable any day of the
week and neither the Appellee nor the LC
have any law, regulation, or jurisdiction to
stop P&TS engaging in this endeavor. The LC
is merely a sore loser under the free enter-
prise system.

B(8) The LC lies to claim Landsberger made
"no showing" that the \$445.00 was connected
with the improvement of the management of
his family estate assets. Forrester and

Landsberger communicated with hundreds of letters and phone conversations on exactly such improvements, and today Landsberger is the benefactor of those multiple benefits. For example, on his car alone, it is now in a trust, his insurance premiums are cut in half, his legal exposure to court suits is eliminated, his annual registration is reduced, and all car purchases can be made at wholesale and without paying any sales tax. Terrific benefits in just one small area alone. The LC stating "no showing" is preposterous.

B(8) The LC lies to state that Landsberger claimed an "excess of withholding exemptions."

First, no exemptions were claimed, or meant to be claimed. All claims were for allowances only (and corrected to read allowances.) The number of such allowances was correctly computed (or corrected to the proper number) according to the Federal and State laws. One problem existed in that

state and federal laws give difference values to an allowance, so it was impossible to show a given number of allowances on the 1040 return that would equate to the same dollar figure on the state return. This was expalined by Landsberger, so there is no basis at this point in time for the ridiculous claims of the LC. Since the Appellee tried to change the number of allowances and since such changes were deliberately made by the IRS and the Appellee in order to commit fraud against Landsberger, it is the Appellee and the IRS who are solely guilty of fraud to extort more taxes than the law permits.

B(9) All references, threats, etc. by the LC to "criminal acts, etc," refers only to the fraudulent claims of the Appellee and the LC. Landsberger has committed no violations of any existing laws. It is just abusive behavior by the LC to make such absurd claims.

B(9) The LC displays its ignorance, pre-

judice, and incompetence by claiming that the PSC and Landsberger constitute an evasion (or even an avoidance, which is legal, by the way) of taxes. As the inventor of the system (it is another prejudiced lie of the LC to refer to the PSC as a "scheme.") Forrester has spent over 25 years developing and refining the systems and checking them out with hundreds of knowledgeable persons in legal and accounting and tax professions. Forrester offers a \$10,000 reward to anyone who can prove any violation of existing laws. To date, there have been no comers. The LC, not being able to take up Forrester either (having been offered the reward in open court) is reduced to making false claims and slinging mud at the systems plus grinding its teeth. None of Forrester's systems are designed for even tax avoidance; all are designed solely as improved mediums, and that is what they are. Thousands have benefited with the various systems and hundreds would be out of

work were it not for the efficacy of the systems. All systems are not in violation of any known laws. Thus, for the LC to rule against the systems, the LC is forced to lie about the facts of their operation.

IN CONCLUSION, Landsberger was NOT the legal owner of any earning assets and thus could not have any constructive receipt after signing the PSC in 1979. Without constructive receipt, Landsberger had no further tax liability. With no further tax liability, Landsberger's filed tax returns reflected correct computations. Thus, the Commissioner's claim for more taxes is without merit or support, and the disallowances of the Commissioner can only be overruled and dismissed as invalid and unsupported by existing applicable law.

(Before me appeared Frank Forrester (11/6/82) AND being duly sworn did depose and state that all the foregoing is true and correct under penalty of perjury. Paul Kaplan,
Notary Public, State of New York.

THE CONSTITUTION OF THE UNITED STATES

ARTICLE 1 Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Deprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

MERTEN'S - PRENTICE HALL ON CONSTRUCTIVE RECEIPT.. (Chapter 10, Page 31)

s10.07. Receipt by Agent Is Receipt by Principal. The general rule is that receipt of income by an agent is equivalent to receipt by the principal and such income is either actually or constructively received by him.

MERTEN'S LAW OF FEDERAL INCOME TAXATION

Vol. 2 Chap. 10 Page 32. Even though an agent or attorney claims a part of proceeds collected for his principal, the full

amount including any portion retained by the agent will ordinarily be income to the principal. Where, however, an agent receives and misappropriates funds for his own use, there is no constructive receipt by the principal since in such case the agent is not acting on behalf of his principal. But this rule was not applied where the agent did not intercept current revenue as the funds came into his hands.

PRENTICE HALL (Federal Taxation) Sec. 61
7464 TO WHOM INCOME TAXABLE 7461 Basic Rules

...If a person merely receives physical possession of income that, in fact, belongs to another person, he is not taxed on it. If he receives it as agent, it is taxable to his principal.

PRENTICE HALL (7541)---If a person receives an amount which in fact belongs to someone else, such an amount is not income to the person who receives it.

PRENTICE HALL (7542). Taxpayer as agent for another.--When a taxpayer receives an amount in the capacity as agent for someone else, the amount is income to that someone who is the principal in the transaction. Therefore, such an amount is not includible in taxpayer's income.

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PRENTICE HALL (7544). Amounts earmarked for use other than by taxpayer.---An amount received by a taxpayer that is earmarked for use other than by him, is generally not income to the taxpayer if he disburses it in accordance with the charge.

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PRENTICE HALL Reg. s1.451-2 (20.151)

The doctrine of constructive receipt affects only cash basis taxpayers. Where a taxpayer keeps his books on another basis, rules of accrual usually determine when he shall report income. That an amount is deducted by an employer as salary expense does not mean necessarily that a cash basis em-

ployee constructively receives it. 20.164
(15). Although constructive receipt is defined by the Regulations, 20.162, it is a doctrine which has been shaped largely by the courts. Originally it could be employed only by the Commissioner. Eventually, however, the courts recognized the theory as a principle of accounting; and now, to the extent that the principle determines the proper year for reporting income, it may be cited by taxpayer or commissioner alike.
- - - - -

PH CONSTRUCTIVE RECEIPT (s451) 20.173

CONTROL OF INCOME PRODUCING PROPERTY

Ordinarily, where the right to receive income is disputed between two parties (as between principal or alleged agent) someone is taxable on the amount and the only question is who. See 746 et seq. In certain cases, however, ownership of income producing property can be proved by no one. Until ownership is settled, therefore, no one may be charged with receipt of income, constructive or otherwise.

U.S. Master Tax Guide, Page 456 Item 1331.

Foreign Tax Treaties. The United States has negotiated a network of treaties with other countries to avoid international double taxation and to prevent tax evasion. Provisions are included to prevent fraudulent evasion and also to restrict legal avoidance. Principal tax treaties now in force are those with Australia, Austria, Belgium, Canada, Denmark, Finland, France, West Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Nigeria, Norway, Pakistan, the Soviet Union, Sweden, Switzerland, Trinidad and Tobago, Union of South Africa and the United Kingdom.

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COMMENT-LUCAS vs EARL. In Lucas vs Earl, the U. S. Supreme Court has set forth a precedent rule to the effect that the tax liability for earnings go with the legal owner of the asset. That is, you can't give away the dividends and the tax on the dividends

without giving away the stock; you can't give away interest and its tax liability without giving away the bonds. The Supreme Court said the fruit attaches to the tree from which it grew. In other words, job compensation and tax liability for same goes with the party who contracted for the services. If a labor contractor has purchased the personal services of an individual and if the labor contractor allows that individual to perform work, both the compensation and the tax liability go to and with the labor contractor.

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RIGHT TO SELL PERSONAL SERVICES via A
LEGAL CONTRACT---Court Cases

1. In Butchers Union Co. vs Crescent City Co., 111 U.S. 764; 1883. Justice Field repeated Adam Smith's Wealth of Nations:

"The property which every man has is his own labor, as it is the original foundation of all other property, so it is most sacred and inviolable. The patrimony of the poor

man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property."

Justice Field also said, "Among these inalienable rights, as proclaimed in the great document (the Declaration of Independence), is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their highest enjoyment."

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2. In Allgeyer vs. State of Louisiana, 165 U.S. 578; 1897, re the 14th Amendment, Justice Peckham said: "The 'Liberty' mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace

the right of the citizen to be free in the enjoyment of his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or a vocation; and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

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3. In Adair vs U.S., 208 U.S. 161, Justice Harlan stated: "In all such particulars the employer and the employee have equality of right, and legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

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4. In Coppage vs. Kansas, 236 U.S. 1, Justice Pitney expanded: "Included in the right of personal liberty and the right of private property-partaking of the nature of each-- is the right to make contracts for the ac-

quisition of property. Chief among such contracts is that of personal employment, by which labor and other service are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established Constitutional sense, the right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money."

5. In Adkins vs Childrens Hospital, 261, U. S. 525, Justice Sutherland said: "In principal, there can be no difference between the case of selling labor (property) and the case of selling goods(property)."

6. In Charles Laughton, 40BTA 101 (1939)
and in Fontaine Fox, 37BTA 271 (1938), the Court ruled to this effect: The fact of privacy of contract existed between the corpor-

ations created by Laughton and Fox and themselves and said contract precluded the adverse application of Lucas vs Earl. In other words, where an agent, who is performing the personal services, has a contract with his principal to turn over his earning property to said principal, then the income from that earning property is taxable to the principal, and in these circumstances a third party employer cannot be held responsible for withholding income taxes. See IRS Reg. Sec. 31-3401(d)1; Rev. Rul. 57-145, CB 1957-1, p.332.

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7. IN Edwards vs Commissioner, 415 F2nd 578, 582; 10th Cir. (1969) the Court held that: The dignity of contract cannot be set aside because a tax benefit results either by design or accident.

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8. In Daniel F. Keller vs IRS, the U.S. Tax Court, via Justice Arthur L. Nims, the Third ruled that: It is legal to establish a one-man corporation for the purpose of receiving

tax and benefit breaks. The Court said that the claim of the IRS that income should be taxed to Keller "would, in effect, disregard the existence of the corporation... and would be arbitrary and capricious."

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9. In 27 F 2nd 149, Judge Gresham said that: U. S. Citizens have the right to own and transfer real and personal property.

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10. In Ditmars et al vs Commissioner, 302 F 2nd 481, 2nd Cir. (1962), the Court determined that: Individuals can set up corporations, professional Corporations, and trusts and contract to sell their services exclusively through such legal entities.

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Final Note: Professor of Contract Law at Northwestern University, Chicago, Ill. stated that, "A contract is valid when there is a meeting of the minds of both parties to the contract."